

# KENT COUNTY WATER AUTHORITY

## BOARD MEETING MINUTES

August 16, 2012

The Board of Directors of the Kent County Water Authority held its monthly meeting in the Joseph D. Richard Board Room at the office of the Authority on August 16, 2012.

Chairman, Robert B. Boyer opened the meeting at 3:30 p.m. Board Members, Mr. Gallucci, Mr. Giorgio, Mr. Inman and Mr. Masterson were present together with the General Manager, Timothy J. Brown, Director of Administration and Finance, Jo-Ann Gershkoff and Legal Counsel, Maryanne Bevans, Esq. The General Manager led the group in the pledge of allegiance.

The minutes of the Board meeting minutes of July 19, 2012 were moved for approval by Board Member Giorgio and seconded by Board Member Gallucci and were unanimously approved.

### **LEGAL MATTERS**

#### **Harris Mills**

The company has gone into receivership. Kent County Water Authority is owed \$3,676.58. Legal Counsel will monitor for proof of claim filing. A permanent receiver was appointed. A proof of claim prepared and forwarded to the General Manager for signature on September 17, 2008 and will be filed in the Kent County Superior Court and sent to the receiver. Proof of Claim was filed and sent to Receiver on September 19, 2008. The proof of claim deadline was December 1, 2008. Legal counsel will continue to monitor for payment on claim. As of May 12, 2009, there has been no change in status. Petition to sell was filed by Receiver in Kent County Superior Court on June 5, 2009. Offer to property made which will allow for partial payment of claims. Legal Counsel will monitor progress of sale.

There has been no further progress regarding the sale of the Harris Mill complex in the receivership matter. Legal Counsel to contact the Receiver for a status report. New offers to purchase have come in which could allow Kent County Water Authority claim in this matter to be paid out of the receivership proceeds. As of September 14, 2009 the previous offer did not materialize. A new offer is being pursued. Legal Counsel will continue to monitor the progress of the sale. The receivership case is in the Supreme Court. On October 1, 2010 the Court approved the sale of the property and the allowed disbursements including payment of Kent County Water Authority bill. This office will continue to monitor payment. On May 13, 2011 Legal Counsel sent a letter to Counsel for potential buyer inquiring as to the status of the sale. Legal Counsel

followed up with counsel for Buyer on June 14, 2011 regarding response to May 13, 2011 correspondence. On July 18, 2011 Legal Counsel was informed by Buyer's Counsel that the sale is on hold pending resolution of Supreme Court Appeals in receivership case. There has been no further word as of April 18, 2012. Legal Counsel forwarded correspondence to Attorney for Buyer on April 17, 2012 for status report. As of July 18, 2012 no response has been received and awaiting Supreme Court decision. The Chairman suggested that monitoring of this matter by Legal Counsel be placed on hold given the value of the claim of Kent County Water Authority.

#### Hope Mill Village Associates

The company is in receivership. Kent County Water Authority is owed \$1,632.44. Legal Counsel to prepare and file Proof of Claim. Proof of Claim was prepared and was forwarded to the General Manager for signatures. Proof of Claim was filed in Kent County Superior Court and was sent to the receiver on August 28, 2008 and as of this date this case is still pending. Hope Mill filed Chapter 11 Bankruptcy on August 20, 2008. Kent County Water Authority was not listed as a creditor. The proof of claim was prepared and signed by the General Manager on November 14, 2008 and was filed with the Bankruptcy Court on November 18, 2008. The proof of claim filing deadline was the end of November, 2008. Pursuant to the plan of reorganization filed by Debtor on November 22, 2008, Kent County Water Authority will be paid in full upon confirmation of the plan by the Bankruptcy Court and Legal Counsel will continue to monitor. As of February 17, 2009 the Court has not scheduled a hearing for confirmation of plan. Debtor will be filing an Amended Plan in March 2009. Legal Counsel will continue to monitor. As of July 16, 2009 the Debtor has not filed an Amended Plan.

The Bankruptcy Court hearing was to be held on August 19, 2009 regarding a motion filed by Hope Mill to convert Chapter 11 to Chapter 7. Legal counsel will monitor the hearing and how the disposition of the hearing will affect the claim of Kent County Water Authority. The hearing was held on December 17, 2009. Assets purchased pursuant to Asset Purchase Agreement. Kent County Water Authority charges to be paid pursuant to Asset Purchase Agreement. Legal Counsel will follow up regarding timetable of payment to Kent County Water Authority. Legal Counsel spoke with Attorney DeAngelis on February 17, 2010 for status on payment to Kent County Water Authority.

Legal Counsel spoke with Attorney DeAngelis on May 13, 2010 and Mr. DeAngelis stated that a final closing has yet to be scheduled, but should be scheduled in the near future. There has been no progress on scheduling a closing as of April 18, 2012. Legal Counsel forwarded correspondence to Attorney DeAngelis on April 17, 2012 requesting status. Attorney DeAngelis was replaced by Attorney Indeglia and correspondence was sent to Attorney Indeglia on May 2, 2012 requesting status. The Chairman suggested that monitoring of this matter by Legal Counsel be placed on hold given the value of the claim of Kent County Water Authority.

## West Greenwich Technology Tank/Rockwood

This matter may be in litigation in that Rockwood Corporation had failed to take any steps and continually denied Kent County Water Authority efforts to take any steps in the painting issues inside of the tank and on February 16, 2009 their surety, Lincoln General Insurance Company, denied the claim as well. The matter was reviewed between the General Manager and Legal Counsel. Rockwood sent a proposal to Legal Counsel on March 31, 2009 and the General Manager weighed the same and a response was sent to Rockwood on April 24, 2009. On May 2, 2009 Rockwood sent another proposal and the General Manager responded to the same on May 8, 2009 requesting a written remedial plan proposal within ten days. On May 8, 2009 Rockwood responded by asking the General Manager to reconsider his position. On May 12, 2009 the General Manager sent correspondence to Rockwood stating the Authority will await Rockwood comments to KCWA letter of May 8, 2009. On May 13, 2009 Rockwood provided an additional response to the KCWA letter of May 8, 2009 with questions. On May 13, 2009 the General Manager sent correspondence agreeing to provide Rockwood with more time to complete a plan of remediation for an additional 10 days. On May 14, 2009, Rockwood sent a response and the General Manager, Merithew and Rockwood to have an informal meeting to work out details. The meeting took place and the Authority is monitoring the efforts of Rockwood to remedy the situation. The tank was recently dry inspected and the vendor remediated the same. Kent County Water Authority is awaiting final inspection of the tank with respect to the remediation. Rockwood has performed work at the site and it is necessary to have a final inspection after the tank has been filled. The tank has been filled and inspection is moving forward. This has been concluded. However, inspection followed which disclosed that there were more paint issues. On July 22, 2010, Legal Counsel notified the Bonding Company regarding action to correct. This will be further discussed by the General Manager in IFR projects. This matter is being discussed which may include litigation and KCWA is awaiting final restoration plans from the vendor. On March 16, 2011 and March 17, 2011, the General Manager received email communications from Rockwood requesting KCWA response to Rockwood performing its February 18th proposal on March 21, 2011. Further, the email stated that Mr. Northrop is no longer with Lincoln and provided an alternate contact for forwarding of the claim of KCWA.

On March 29, 2011 Legal Counsel sent correspondence to Mr. Northrop's successor, Paul Poppish pursuant to Mr. Law of Rockwood. After receiving no reply, Legal Counsel sent a follow up letter to Mr. Poppish on April 13, 2011. On May 16, 2011, Legal Counsel called Lincoln General and Mr. Poppish is no longer with the company and was directed to Mr. Bob Griffith and Legal Counsel spoke with him and was asked to send the correspondence to him which was accomplished on even date. No response was received from Mr. Griffith and Legal Counsel sent a follow up letter on June 9, 2011.

On July 14, 2011 Legal Counsel had a telephone conference with Bob Griffith from Lincoln General who stated that he would get something out to Legal Counsel the beginning of the week of July 18, 2011 and a letter was received on July 17, 2011

stating that he would discuss it with his insured and would respond thereafter. On August 5, 2011, Legal Counsel sent a follow up letter to Mr. Griffith since no response was received. A second follow up letter was sent to Mr. Griffith on November 16, 2011 since there has been no response.

A complaint was filed in Kent County Superior Court and served on Defendants Rockwood Corporation and Lincoln General Insurance Company on February 23, 2012. Defendants requested an extension to answer per Stipulation and their answer was due April 2, 2012 and was received by Legal Counsel on April 2, 2012. Mediation of this matter is scheduled for June 29, 2012 and Legal Counsel forwarded a mediation statement to the Mediator, Matthew T. Oliverio on June 22, 2012 and the mediation was held on June 29, 2012. As a result of the mediation, Kent County Water Authority is to receive \$80,000. Rockwood's initial offer was \$20,000. The executed final documents were sent to Attorney Campbell and the monies are due to KCWA by August 28, 2012.

#### Spectrum Properties, The Oaks, Coventry, Rhode Island

Legal Counsel for the developer forwarded on July 13, 2009 to Kent County Water Authority Legal Counsel for comment on the proposed form of easement deeds with respect to the residential subdivision. On July 29, 2009, Legal Counsel for Kent County Water Authority sent a response to Attorney William Landry setting forth comments to the proposed form of deeds. Legal Counsel received revised deeds from Attorney Landry on September 10, 2009 and they have been forwarded to the General Manager for review and have been approved by the General Manager. On September 24, 2009, Legal Counsel forwarded to Attorney Landry correspondence stating that the form of easement deed has been approved by Kent County Water Authority and for Attorney Landry to forward the original executed deeds to Kent County Water Authority for execution of acceptance. Legal Counsel has not received the deeds to date therefore Legal Counsel forwarded status inquiry correspondence to Attorney Landry on November 18, 2009. Attorney Landry replied to Legal Counsel on November 23, 2009 stating that the developer is in the midst of scheduling a final approval hearing with the Town and Attorney Landry will provide Legal Counsel for KCWA with the anticipated timetable for final approval and recording of the deeds upon Mr. Landry's receipt of this information.

Legal Counsel was pursuing Attorney Landry for status of his receipt of timetable for municipal approvals. Legal Counsel telephoned Attorney Landry and left a voicemail message as to status and subsequently forwarded correspondence to Attorney Landry on March 11, 2010. On May 11, 2010, Legal Counsel forwarded subsequent correspondence to Attorney Landry inquiring as to the status of the matter. The Developer contacted Legal Counsel directly and informed her that final approvals have not been received. Sanford J. Resnick, Esq. forwarded correspondence on September 17, 2010 to the Chairman informing of his representation of the developer and a request to appear before the Board to discuss inspection fees.

Mr. Resnick appeared at the May 19, 2011 Board Meeting and the staffs are working together with the Developer and Legal Counsel. Mr. Resnick will draft agreements with respect to flushing and constructing the water line. On August 15, 2011 Legal Counsel left a message with Mr. Resnick for status update and as of July 19, 2012 Legal Counsel has not received a response. The Chairman suggested that Legal Counsel forward correspondence to Mr. Resnick as to the status of this matter and correspondence was forwarded to Mr. Resnick. Legal Counsel also left a telephone message for Mr. Resnick on August 16, 2012 and did not receive a response. The Chairman requested Legal Counsel send further correspondence to Mr. Resnick informing him that the matter has been removed from the Agenda given no response from the developer since May 19, 2011.

#### DPUC – Gregory Decubellis

Legal Counsel received from the DPUC on March 12, 2012 an entry of appearance for John A. Pagliarini.

There was a meeting between the parties on April 30, 2012 at the offices of Kent County Water Authority which said meeting was recommended by the hearing office prior to commencing discovery. This matter is scheduled for hearing on August 22, 2012.

#### **Director of Finance Report:**

Jo-Ann Gershkoff, Finance Director, explained and submitted the financial report. Statement of Revenues, Expenditures and Change in Fund Balance as of June, 2012, Cash Location FY 2011-2012 and Cash Receipts and Disbursements FY 2011-2012 attached as “**A**”, and after thorough discussion with regard to the sales and revenue. The restricted accounts were all funded for the period and collections have exceeded forecasts.

Board Member Gallucci moved and seconded by Board Member Masterson to accept the reports and attach the same as an exhibit and that the same be incorporated by reference and be made a part of these minutes and it was unanimously,

VOTED: That the financial report and Statement of Revenues, Expenditure and Change in Fund Balance as of June, 2012, Cash Location FY 2011-2012 and Cash receipts and Disbursements FY 2011-2012 attached as “**A**” be approved as presented and be incorporated herein and are made a part hereof.

**Point of Personal Privilege and Communications:**

None.

**GENERAL MANAGER/CHIEF ENGINEER'S REPORT**

**Old Business:**

**New Business:**

**Tank Cleaning Inspection Proposal, Selection and Award**

The General Manager stated there was one bid for the Tank Cleaning Inspection Proposal and that it was his recommendation that Acuren Inspection, Inc. met the requirements of the contract documents and it was necessary, fair and reasonable as evidenced and attached as “B” and is in the best interests of Kent County Water Authority.

It was moved by Board Member Masterson and seconded by Board Member Gallucci to award the bid for the Tank Cleaning Inspection to Acuren Inspection, Inc. in the amount of \$34,923.00 as evidenced and attached as “B” and it was unanimously,

VOTED: To award the bid for the Tank Cleaning Inspection to Acuren Inspection, Inc. in the amount of \$34,923.00 as evidenced and attached as “B”.

**Website Development, Selection and Award**

The General Manager stated there was one bid for the website development proposal and that it was his recommendation that Innotech met the requirements of the contract documents and it was necessary, fair and reasonable as evidenced and attached as “C” and is in the best interests of Kent County Water Authority.

It was moved by Board Member Inman and seconded by Board Member Masterson to award the bid for the website development to Innotech in the amount of \$14,325.00 as evidenced and attached as “C” and it was unanimously,

VOTED: To award the bid for the website development to Innotech in the amount of \$34,923.00 as evidenced and attached as “C”.

**Legal Services; Proposal Review**

**General Counsel**

**Rate Council**

The General Manager informed the Board that advertisements were placed for General Legal Counsel and Rate Legal Counsel, respectively. Proposals were received from LaPlante Sowa Goldman; Patrick J. Sullivan, Esq.; Robert E. Flaherty, Esq.; K. Joseph Shekarchi, Esq. (for rate counsel); Robert E. Watson, Esq.; Pannone Lopes Devereaux and West LLC; and Moses Afonso Ryan Ltd. as evidenced in the summary attached as "D".

The Chairman stated that the proposals received were comprehensive and suggested that the Board engage Legal Counsel at this meeting as this matter has been pending since June. He stated that it is the decision of the Board as to whether or not to further interview the candidates.

Board Member Gallucci stated that in the past, the Board had separate general counsel, rate counsel and bond counsel and suggested that general counsel and rate counsel be separate.

Board Member Inman stated that further interviews of the candidates be performed. The Chairman reiterated that the engagement of Legal Counsel be resolved at this meeting.

Robert Watson, Esq. and Patrick Sullivan, Esq. were in attendance at the meeting. Mr. Watson resubmitted his proposal for both general legal counsel and rate counsel. Mr. Sullivan informed the Board of his extensive municipal experience and court experience.

Board Member Masterson stated that Mr. Sullivan sent a letter in response to the advertisement and opined that the letter did not properly respond to the advertisement as his qualifications were not formally submitted. Board Member Masterson suggested that candidates who did not formally answer the advertisement be removed from consideration and interviews performed of the others. He further stated that one Legal Counsel be engaged for both general and rate counsel to conserve legal fees.

The Chairman reiterated that the engagement of Legal Counsel has been pending too long and the Board has sufficient information to take action on engagement of Legal Counsel. Board Member Masterson reiterated that interviews should be performed.

Board Member Giorgio inquired of Board Member Masterson as to whom would be interviewed. Board Member Masterson replied that only these candidates who responded completely to the advertisements be interviewed as the candidates spent considerable time to submit complete and comprehensive responsive proposals. Board Member Giorgio inquired as to missing information. Board Member Masterson stated that certain candidates simply submitted letters which did not respond to the advertisements. He stated that three candidates did not comply with the advertisements therefore, Board Member Masterson suggested interviews be conducted of those did.

The Chairman suggested that Robert Watson, Esq. be engaged to handle Rate/PUC services with additional duties as the Board deems necessary. He further suggested that Patrick J. Sullivan, Esq. be engaged as general Legal Counsel and Board Member Inman concurred with the Chairman's suggestion.

Further discussion ensued and the Chairman made a motion and it was seconded by Board Member Giorgio to engage Robert Watson, Esq. as rate counsel with additional duties necessary at a negotiated fee structure and it was unanimously,

VOTED: To engage Robert Watson, Esq. as rate counsel with additional duties necessary at a negotiated fee structure.

The Chairman then made a motion and it was seconded by Board Member Giorgio to engage Patrick J. Sullivan, Esq. as general Legal Counsel with additional duties as the Board deems necessary with a negotiated fee structure and it was unanimously,

VOTED: To engage Patrick J. Sullivan, Esq. as general Legal Counsel with additional duties as the Board deems necessary with a negotiated fee structure.

The respective Legal Counsel will draft and submit letters of engagement formalizing their engagement as Rate/PUC counsel and general Legal Counsel.

#### **WSSMP – Submitted and in the review period**

The General Manager informed the Board of the submission to the State which met all obligations. The same will be presented to the Water Resources Board on August 17, 2012.

#### **CAPITAL PROJECTS:** **INFRASTRUCTURE PROJECTS**

All Capital and Infrastructure Projects were addressed by the General Manager and described to the Board by the General Manager with general discussion following and are evidenced and attached as "E".

Board Member Inman made a Motion to adjourn, seconded by Board Member Giorgio and it was unanimously voted by the Board Members present,

VOTED: To adjourn the meeting at 4:30 p.m.

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Secretary Pro Tempore